

EXHIBIT 3

Page 1

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 Case No. 12-120202 (MG)
5 Chapter 11

6 Administered Jointly

7 -----x

8 IN RE:

9 RESIDENTIAL CAPITAL, LLC, et al.,
10 Debtors.
11 -----x

12 July 26, 2013

13 8:35 a.m.

14 Deposition of S.P. KOTHARI, Ph.D.,
15 pursuant to Notice, held at the offices of
16 Willkie, Farr & Gallagher LLP, 787 Seventh
17 Avenue, New York, New York, before Todd
18 DeSimone, a Registered Professional
19 Reporter and Notary Public of the State of
20 New York.
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1 KOTHARI

2 research with respect to the cash flow
3 projections.

4 Q. You did independent research --
5 did you do independent research with
6 respect to other subjects addressed in
7 Exhibit 2?

8 A. I did.

9 Q. What were those subjects?

10 A. Discount rate related issues.

11 Q. Anything else?

12 A. With respect to item 3, which
13 is litigation related recoveries, that is
14 something else that I did some independent
15 research.

16 Q. That was reviewing the
17 Cornerstone and NERA analyses?

18 A. That was part of it.

19 Q. And reading Mr. Lipps'
20 declaration?

21 A. That was part of it.

22 Q. Anything else on that subject?

23 A. Reviewing the financial report
24 footnotes by FGIC. I have listed the
25 items I have reviewed in my report.

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2 Q. I understand. Did you review
3 all of the items yourself listed in I
4 guess it is Exhibit 2 to your report? Did
5 you read everything itemized on that
6 exhibit?

7 A. I certainly reviewed those.
8 Some of those documents I might not have
9 read line by line.

10 Q. You did not develop your own
11 discount rate in connection with your
12 assignment here, did you?

13 MR. JOHNSON: Objection to
14 form.

15 A. No, I did not.

16 Q. But that is something based on
17 your expertise you could have done?

18 MR. JOHNSON: Objection to
19 form.

20 A. I have the expertise in
21 calculating discount rates.

22 Q. So the answer to my question is
23 yes?

24 MR. JOHNSON: Objection to
25 form.

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2 others that it did not verify, do you
3 think it was reasonable for FGIC to do
4 that?

5 MR. SIDMAN: Objection.

6 MR. JOHNSON: Objection to
7 form. Assumes facts not in evidence.

8 A. My general understanding is
9 Duff & Phelps obtained and used
10 information supplied by FGIC. Also my
11 assessment is that FGIC had access to a
12 lot more information that Duff & Phelps
13 simply could not have had, so it was
14 reasonable to seek that information. I
15 also determined that FGIC and Lazard
16 didn't have incentives to bias that
17 information.

18 For all those reasons I thought
19 it was reasonable for Duff & Phelps to
20 have relied on the information that they
21 obtained from FGIC and some other sources.

22 Q. Duff & Phelps obtained
23 information from FGIC and other sources,
24 right?

25 A. That is correct.

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2 Q. And would they also include the
3 strength of the claims from a factual
4 perspective?

5 MR. JOHNSON: Objection to
6 form.

7 A. It is possible, yes.

8 Q. It is more than possible, isn't
9 it, sir? Isn't it the case that those are
10 the kinds of things that one would
11 consider in projecting the probable
12 outcome of a litigation?

13 MR. JOHNSON: Objection to
14 form, vague.

15 A. The reason I say it is possible
16 is because not in every scenario each of
17 those factors would be applicable.

18 Q. They may be applicable or
19 inapplicable, but one would consider
20 whether they were applicable or
21 inapplicable, right?

22 MR. JOHNSON: Objection to
23 form.

24 A. Not necessarily.

25 Q. Did you do any of those things

1 KOTHARI

2 in reaching your conclusion that it was
3 reasonable for Duff & Phelps not to
4 include potential recoveries associated
5 with pending litigation in its model?

6 A. Qualitatively, yes, I did
7 consider all of those factors because some
8 of those underlie the assessment that is
9 provided. So I have relied on some
10 assessment that has been provided by other
11 experts, not just in the matter of
12 litigation, but experts as, in general, as
13 experts in the world.

14 Q. What experts?

15 A. So there is some financial
16 reporting that has taken place. That
17 financial reporting goes through a process
18 of the information that those lawyers for
19 the company, accountants for the company,
20 auditors for the company, managers of the
21 company, and all of them are professional
22 experts in their respective fields, their
23 collective judgment is distilled in the
24 information that is supplied in places
25 like financial reports, and I have relied

1 KOTHARI

2 on that as one of the inputs. That is the
3 sense in which indirectly I have factored
4 in all the items that you earlier listed.

5 Q. So you factored in all of the
6 items we discussed not directly but
7 indirectly; is that your testimony?

8 A. That is correct.

9 Q. And you did so on the basis of
10 the information supplied in the March 31,
11 2003 statutory filing by FGIC as well as
12 the information contained in the
13 declaration prepared by Jeffrey Lipps,
14 correct?

15 MR. JOHNSON: Objection to
16 form.

17 MR. SIDMAN: Objection to form.

18 A. All the inputs I have
19 considered are listed in 5.

20 Q. And so we are clear about that,
21 those inputs are the March 31, 2013
22 statutory filing by FGIC, correct?

23 A. Miller affidavit is there also.

24 Q. I asked you about the statutory
25 filing. That was one of the inputs that

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2 impression I received from those is that
3 there is some possibility of recovering
4 some litigation proceeds from settlement
5 from those claims, but my general
6 impression upon reviewing those is that
7 there isn't anything definite yet that has
8 risen to the level of being disclosed as
9 definitive settlement on the horizon, in
10 the financial statements of FGIC either.

11 Q. Are you done?

12 A. Yes.

13 Q. What were the causes of action
14 that FGIC was asserting in those claims?

15 MR. JOHNSON: Objection to
16 form.

17 MR. SIDMAN: Objection to form.

18 A. There might have been multiple
19 causes, but one cause that comes to mind
20 is some representation and warranties,
21 breach of those.

22 Q. Anything else?

23 A. I haven't, in preparing for the
24 deposition today, I haven't gone through
25 one by one, so I cannot sitting here give

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2 MR. JOHNSON: Objection to
3 form. Argumentative.

4 Q. Let's focus now on the
5 claims -- on the cases where FGIC is a
6 plaintiff and is asserting claims, okay?

7 A. Okay.

8 Q. We can deal with the cases
9 where FGIC is a defendant separately. All
10 right?

11 A. All right.

12 Q. Did you know at the time that
13 you rendered your opinion what causes of
14 action FGIC was asserting in those cases?

15 MR. JOHNSON: Objection to
16 form. Asked and answered.

17 MR. SIDMAN: Objection.

18 A. In some of the cases the issue
19 was about breach of representations and
20 warranties.

21 Q. Did you know at the time what
22 those causes of action were?

23 MR. JOHNSON: Objection to
24 form.

25 A. I gave you an example of one.

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2 Q. I understand you are giving me
3 an example.

4 I'm asking whether you knew at
5 the time that you concluded, and I'm
6 reading now from paragraph 24, that
7 attempting to quantify the highly
8 uncertain litigation recoveries in those
9 cases would be speculative?

10 MR. JOHNSON: Objection to
11 form.

12 A. Yes.

13 Q. So you knew what all of the
14 causes of action were in all of those
15 cases?

16 A. To draw the conclusion, I
17 developed a general understanding of what
18 the causes are in various cases and I also
19 determined that when you take the totality
20 of the inflows and outflows that might be
21 possible, the net effect is speculative.

22 Q. Do you remember a minute ago I
23 said let's focus on the cases where FGIC
24 is a plaintiff? Are you capable of doing
25 that, focusing on that set of cases?

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2 main assumptions." Do you see that?

3 A. I do.

4 Q. Then under item J, it says
5 "haircut of 40 percent of unpaid payout
6 claim estimates." Do you see that?

7 A. I do.

8 Q. Do you know what that refers
9 to?

10 A. An unpaid claim, I would just
11 literally be reading back that assumption,
12 that they are assuming there would be a
13 haircut of 40 percent.

14 Q. A haircut on what; do you know?

15 A. Unpaid claim estimates,
16 policyholders' claim estimates.

17 Q. Is that something that you took
18 into consideration in rendering your
19 opinions?

20 A. The cash flow forecasts, I took
21 those from -- the entire chain from FGIC,
22 Lazard, Duff & Phelps, as given to me, so
23 therefore I did not go into questioning
24 the assumption of 40 percent haircut.

25 Q. And that is not something that

1 KOTHARI

2 I take it you discussed with anyone, the
3 40 percent haircut?

4 A. I did not discuss that, no.

5 Q. You understood that Duff &
6 Phelps used a range of discount rates in
7 conducting its analysis?

8 A. Yes, I do.

9 Q. And you developed an opinion on
10 that subject, correct?

11 A. I did.

12 Q. What was your opinion on that
13 subject?

14 A. The range of 10 to 20 percent
15 discount rate that they used was
16 reasonable given my expertise on
17 calculation of discount rates.

18 Q. Do you know how Duff & Phelps
19 developed that range of discount rates?

20 A. I did not know at the time I
21 was preparing the report, but my
22 understanding, again, it is a general
23 understanding, is that they used the same
24 10 to 20 percent that Lazard had used.

25 Q. Do you know why Duff & Phelps

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2 yes, I would agree.

3 Q. So you will agree that
4 depending on the circumstances the
5 assumptions underlying Ibbotson's models
6 might not apply?

7 MR. JOHNSON: Objection to
8 form.

9 A. Yes.

10 Q. Do you know whether the models
11 utilized in Ibbotson -- I beg your pardon,
12 let me start over.

13 Do you know whether the
14 assumptions underlying Ibbotson's models
15 apply in the particular circumstances
16 here?

17 A. The nature of business that
18 FGIC is engaged in and the industry that I
19 identified from the Ibbotson handbook, I
20 have every reason to believe that the
21 range in Ibbotson handbook for that surety
22 industry, I believe it is 635, is
23 applicable to the firm in question, which
24 is FGIC, and that's the sense in which the
25 circumstances and the assumptions are

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2 applicable here.

3 Q. Just so I understand, is it
4 your testimony that the assumptions
5 underlying Ibbotson's models for companies
6 falling in the SIC 635 category apply to
7 FGIC?

8 A. In my report I also qualify how
9 the range might be in fact conservative in
10 the sense that FGIC, if anything, might be
11 riskier than indicated by industry 635.

12 But, that said, as a general
13 matter is that industry and that range, or
14 use of that range as a reasonable
15 approximation for FGIC, I agree with that
16 statement.

17 Q. Now, in undertaking this
18 analysis, you use Ibbotson's estimates of
19 the weighted average cost of capital,
20 correct?

21 A. That is correct.

22 Q. And if you turn to Exhibit 3 to
23 your report, it appears to be a page out
24 of Ibbotson.

25 A. Yes.

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2 process that they had followed, and based
3 on my general understanding of this field,
4 if you will, was that process reasonable
5 or not, and based on all of that, the
6 analysis that I conducted, I reached the
7 conclusion that yes, it seemed reasonable.

8 Q. But you yourself have no
9 experience using Intex to model
10 mortgage-backed security cash flows; is
11 that correct?

12 MR. JOHNSON: Objection, asked
13 and answered.

14 A. That is correct.

15 Q. Did you review the specific
16 assumptions, again, used by Duff & Phelps?

17 A. I did not review the specific
18 assumptions.

19 Q. If you did not review the
20 specific assumptions used and you did not
21 review the model settings, how do you
22 believe you can opine on the range of the
23 results that Duff & Phelps obtained?

24 A. So I went through step by step.
25 So, first, the initial data that Duff &

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2 Phelps is using came from FGIC and Lazard
3 and they don't have any reason to skew
4 that information one way or the other.

5 Then I ask well, is the
6 professional working on it? What kind of
7 experience? Has he been working in this
8 area? He has been in the industry and as
9 a consultant. I and my team, we said,
10 Intex, is that a model that gets used in
11 the industry? And the answer is yes.

12 So the only leap of faith by
13 way of process that I wanted to make --
14 and I had conversation with John Schroeder
15 and I asked him how he developed some of
16 those forecasts and then he explained to
17 me how he has used some historical
18 experience of the mortgages, of those
19 claims, macroeconomic conditions, about
20 how they might affect the default rates or
21 claim phenomenon, behavior of claims.

22 Based on that process,
23 description, and discussion with him, I
24 reached the conclusion that that process
25 seems reasonable to me and didn't strike